

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 598 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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ALAYA MAMAD BALOCH

Versus

STATE OF GUJARAT

Appearance:

MR AVINASH K MANKAD for Petitioners

Mr.BUKHARI ADDL.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 08/10/97

ORAL JUDGEMENT

The applicants are the original accused of Summary Case no.178 of 1985 of the Court of learned JMFC, Mandvi, District Kutch. They were charged for offences under Sections 66(1)(b) and 65(e) read with Sec.81 of the Bombay Prohibition Act. The case of the prosecution was that on 7-12-1984, on prior information, between 6.30 PM and 7.00 PM raid was conducted at the house of accused no.1, where all the three accused were found present and accused no.1 was sitting on the cot and accused no.3 was sitting nearby on the floor. Underneath the Cot was a plastic cover of yellow colour and also a tumbler in both of which, what appeared to be country liquor was found. Accused no.2 holding something in his hand, left the place and she being a woman and in absence of woman constable, she was allowed to go.

2. On chemical analysis, it was found to be country made liquor and therefore, they were prosecuted and at the end of the trial, they were convicted. By way of

sentence for the offence under Sec.66(1)(b), 3 months imprisonment was awarded and a fine of Rs.500/- and in default, 1 1/2 months S.I. was awarded. For the offence under Sec.65(e), six months SI was awarded with a fine of Rs.500/- and in default to undergo 1 1/2 months sentence.

3. Challenging this conviction order, the matter was carried by way of appeal No.21/86 in the Court of learned Sessions Judge of Kutch at Bhuj where the learned Sessions Judge dismissed the appeal and hence the present revision.

4. Thus, so far as the facts are concerned, there are concurrent findings of both the Courts below.

5. The facts would involve the raid conducted, contraband recovered including Rs.11.35 by way of sale proceeds, and country made liquor and that the 3 accused were in conscious possession of the same.

6. So far as the jurisdictional error is concerned, none could be pointed out by the learned Advocate Shri Mankad. He, however, argued the matter with reference to the error committed in appreciating the evidence. Looking to the depositions of both the panch witnesses they were recalled and cross examined at length. The next witness Police Constable Iqbal had taken the muddamal article for examination at the laboratory and followed by the Investigating Officer himself. All the three have supported the case of the prosecution. So far as the house is concerned, not a single question is asked to the Investigating Officer and it is virtually considered that it belongs to the accused.

7. Except for pointing out that Head Constable Nansingh Thakkar, who finally concluded the investigation, was not a member of the raiding party, though claimed to be one by the Investigating Officer, nothing by way of contradictoin could be brought on behalf of the defence. In this background, obviously, nothing of merit is to be found in the revision.

8. 77 Criminal Law Reporter (Maharashtra) page 227 is relied on by L.A. Mr.Mankad for making out a point of conscious possession. There being no such dispute, obviously, the decision has no bearing on the outcome of the present revision application.

9. AIR 1980 SC 1314 was cited with regard to establishing link between the article recovered and the

article finally examined by the FSL. In this regard the said constable Mr.Iqbal has been examined, but, no question was put to him disputing the identity of the sample. The Laboratory Report Exh.32 also clearly indicates the identity of the sample examined by the laboratory.

10. Before conducting the matter, it was inquired of the office whether record and proceedings are there or not. However, L.A. Mr.Mankad supplied copies of the papers which he was relying upon and at his request, the matter has been conducted on the basis of that record. Whatever I have referred to in the order by way of material on record is on the basis of the copies supplied by Mr.Mankand. These papers are kept on record for future reference if necessary.

11. So far as the Revision Application is concerned, it fails. Rule is discharged.
